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

FAO No.5140 of 2022 (O&M)

Date of Decision : 02.04.2025

The New India Assurance Company Limited

.....Appellant

Versus

Kiran Devi and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Deepak Suri, Advocate for the appellant.

Mr. Ashish Rana, Advocate for the respondents.

PANKAJ JAIN, J.(Oral)

Insurance Company is in appeal. Challenge is to the order passed by the Commissioner whereby a compensation of Rs.13,71,848/- has been awarded to the respondents/claimants on account of death of Bhushan, who died at the age of 27 years while working as helper under respondent No.1.

2. Claimants filed claim petition seeking compensation on account of death of Bhushan. As per claimants, Bhushan who was employed as helper, was going from Panipat to Haridwar on 15.03.2017 for delivery of goods. During travel, he fell unwell. He got admitted in Civil Hospital, Kaithal for treatment. He was thereafter referred to PGI, Chandigarh for further treatment. Bhushan died during the course of treatment. Claimants



claimed that deceased was working on a monthly salary of Rs.12,500/-. It was further claimed that the death report of the deceased was conducted by the doctors of PGI, Chandigarh. Despite knowing about death of Bhushan, respondents failed to pay compensation amount to the claimants.

3. The claim petition was contested by the respondents claiming that Bhushan died of cirrhosis of liver due to alcohol and hepatitis. He did not die of an accident, arising out of and during the course of employment.

4. On the basis of pleadings, Commissioner framed the following issues:

- “1. Whether the accident of the deceased occurred during and out of course of his employment?
2. Whether the applicants are entitled to the amount as claimed in the claim application, if so to what amount and from whom?
3. Relief.”

4. Commissioner held that the applicants were able to prove that at the time of death, deceased was 27 years of age. There is a strong presumption that the deceased has developed disease only during and out of his occupation as conductor and thus Bhushan having died out of a disease arising out of and during the course of employment, the claimants are entitled to compensation.

5. While issuing notice of motion, this Court observed as under:

“Learned counsel representing the appellant while referring to death report of late Sh. Bhushan, submits that in the column of his actual cause of death, the doctors have reported it to be a case



of liver cirrhosis (due to alcohol consumption). He submits that the aforesaid disease was not related to his course of employment.

Notice of motion for 28.03.2023.

In the meantime, the disbursement of the amount shall remain stayed.”

6. Ld. Counsel for the appellant has reiterated the argument as noticed by this Court while issuing notice of motion and has contended that the disease which led to death of Bhushan, having no relation with his employment, he cannot be said to have died of accident arising out of and in the course of employment. Thus, the claimants are not entitled for compensation under the Employee's Compensation Act, 1923.

7. Per contra, counsel for the respondents refers to the ratio of law laid down by Supreme Court in the case of **‘Messrs Mackinnon Machenzie and Co. Pvt. Ltd. vs. Ritta Farnandes’**, 1969 ACJ 419 to submit that where death of an employee arose out of and in the course of employment, the employer must prove evidence within his special knowledge, otherwise, adverse inference needs to be drawn to hold that the death of workman arose out of and in the course of his employment. He submits that there being no evidence led by the employer regarding any pre-existing disease suffered by deceased Bhushan, Commissioner has rightly awarded compensation to the claimants.

8. I have heard counsel for the parties and have carefully gone through records of the case.



9. So far as the issue of employment and the death of Bhushan is concerned, the same is not in dispute.

10. The only issue that arises for consideration of this Court is :

“Whether in the facts and circumstances of the case, it can be said that the death of employee-Bhushan was caused by an accident arising out of and in the course of employment or not?”

11. In **Messrs Mackinnon Machenzie and Co. Pvt. Ltd.'s** case (supra) while referring to Section 3 of 1923 Act, Supreme Court observed as under :

“It is well established that under this section there must be some casual connection between the death of the workman and his employment. If the workman dies as a natural result of the disease from which he was suffering or while suffering from a particular disease, he dies of that disease as a result of wear and tear of his employment, no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but the disease coupled with the employment then it could be said that the death arose out of the employment and the employer would be liable.

4. Even if a workman dies from a preexisting disease, if the disease is aggravated or accelerated under the circumstances which can be said to be accidental, his death results from injury by accident. This was clearly laid down by the House of Lords in ***Clover Clayton & Co. v. Hughes, 1910 A.C. 242***, where the deceased, whilst tightening a nut with a spanner, fell back on his



hand and died. A post mortem examination showed that there was a large aneurism of the aorta, and that death was caused by a rupture of the aorta. The aneurism was in such an advanced condition that it might have burst while the man was asleep, and very slight exertion or strain would have been sufficient to bring about a rupture. The County Court Judge found that the death was caused by a strain arising out of the ordinary work of the deceased operating upon a condition of body which was such as to render the strain fatal, and held upon the authorities that this was an accident within the meaning of the Act. His decision was upheld both by the Court of Appeal and the House of Lords:

"No doubt the ordinary accident," said Lord Loreburn, L.C.

"is associated with something external: the bursting of a boiler or an explosion in a mine, for example. But it may be merely from the man's own miscalculation, such as tripping and falling. Or it may be due both to internal and external conditions, as if a seaman were to faint in the rigging and tumble into the sea I think it may also be something going wrong within the human frame itself, such as straining of muscle or the breaking of a blood vessel. If that occurred when he was lifting a weight, it would properly be described as an accident. So, I think, rupturing an aneurism when tightening a nut with a spanner may be regarded as an accident."

With regard to Lord Macnaghten's definition of an accident being "an unlooked for mishap or untoward event which is not expected or designed" it was said that an event was unexpected if it was not expected by the man who suffered it, even though everyman of (commonsense who knew the circumstances would think it certain to happen.

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12. Death report of deceased was relied upon by the claimants themselves, as Exhibit P-7. The same reads as under:

DEATH REPORT	
FORM NO. 2 & 8 Combined	
1. Date of Death : 15/3/2017	2. Name of Deceased : Bhushan
3. Name of Father/Husband of the Deceased : Pawan chand	4. Name of Mother of the Deceased : Kiran devi
5. Sex of the Deceased : Male	6. Age of Deceased : 27 years
7. Place of Death : GMCH, Sector 32, Chd.	8. Residential address at the time of death : Mata Gate near Gyaatri school Kaitthal
9. Permanent Address of the Deceased : Mata Gate near Gyaatri School Kaitthal	10. Informant's Name : Satpal Address : Vill Agondh dist Karnal Signature or left thumb mark of the informant
11. Name of Town/Village : Kaitthal. Name of District/State : Haryana	12. Religion of the Family (Please tick) 1. Hindu ☒ 2. Muslim ☐ 3. Sikh ☐ 4. Christian ☐ 5. Any other religion (Write the name of religion):
13. Occupation of the Deceased : (if no occupation write 'Nil') Conductor	14. Type of Medical Attention Received before Death : As per A&A guidelines
15. Was the Cause of Death Medically Certified ? (Please tick) 1. Yes ☒ 2. No ☐	16. Name of Disease or Actual Causes of Death Decomposed, (For all deaths irrespective of whether medically certified or not) Chronic (Alcohol) UGI Bleed & Stenosis E. Hepatic Encephalopathy T. Stroke T. Cardiac arrest
17. In case this is a female death, did the death occur while pregnant, at the time of delivery or within 6 weeks after the end of pregnancy. (Tick the appropriate entry below) 1. ☐ 2. ☐	18. If used to habitually smoke, for how many years ? No
19. If used to habitually chew tobacco in any form, for how many years ?	20. If used to habitually chew arecanut in any form (including pan masala) How many years ? No
21. If used to habitually drink alcohol, for how many years ? Yes from 5 years	22. Time of Death : 8:25 PM Name of Ward : Emergency medicine Admission Date : 12/3/2017 Stay in Hospital (in days) : 4 days
23. Body claimed by (Please tick) 1. Relatives ☒ 2. Police 3. None Divyashree	24. Autopsy 1. Yes 2. No ☒ Accident/Suicide/Homicide Service Unit Name of Head/Unit Medicine emergency Dr Ram Singh
25. Do you want to donate Eyes of Deceased ? Yes ☐ No ☒ GMCH-32, Chd. C.R. No. 170307498 Admn No. 2017/10651	Death Declared by : Dr. Sahib Name of Doctor : Dr. Ajeet Designation : SR Medicine Date : 15/03/2017 Ajeet



13. From the documentary evidence brought on record by the claimants themselves, it is evident that the deceased died of liver cirrhosis. The onus was thus upon the claimants to show causal effect relationship between liver cirrhosis and the nature of employment of the deceased. The report further mentions that cirrhosis is due to alcohol. This has caused fatal dent to the case of the claimants. In view thereof, this Court finds that the Commissioner totally misread the death report brought on record as Annexure P-7 to hold that there is a presumption in favour of the claimants whereas the document rather rebuts the presumption in favour of the claimants and proves to be fatal blow to their case.

14. In view of above, this Court finds that the Commissioner has wrongly held that there is presumption that the deceased has developed the disease in his body during and out of his occupation as conductor. As a result of above, the impugned order passed by the Commissioner is hereby set aside.

15. At this stage, counsel for the claimants submits that the death report cannot be held to be a conclusive proof of cause of death of the deceased as report does not show on whose statement it was recorded that deceased was addicted to alcohol for 5 years. He submits that claimants be afforded an opportunity to lead evidence to dislodge the death report. Since, the objective of the Act is to compensate the family in destitute, I find request made to be fair.



16. The matter is remanded back to the Commissioner to decide the case afresh in accordance with law after analysing the evidence on record to ascertain as to whether the cause of death of the deceased was due to an accident arising out of and during the course of employment or not. Both the parties be granted opportunity to lead evidence accordingly.
17. Pending application, if any, shall also stand disposed off.

April 02, 2025		(Pankaj Jain)
Dpr		Judge
	Whether speaking/reasoned	: Yes/No
	Whether Reportable	: Yes/No