Mst.Param Pal Singh Tr.Father vs M/S National Insurance Co.& Anr on 14 December, 2012

Equivalent citations: AIR 2013 SUPREME COURT 974, (2013) 1 CRIMES 1

Bench: Fakkir Mohamed Ibrahim Kalifulla, T.S. Thakur

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9084 OF 2012
(@ SLP (C) NO. 16063 OF 2007)

Mst. Param Pal Singh Through Father ….Appellant

VERSUS

M/s National Insurance Co. & Anr. .…Respondents

J U D G M E N T

Fakkir Mohamed Ibrahim Kalifulla, J.

1. Leave granted.

2. This appeal is directed against the judgment of the High Court of Delhi passed in FAO No.184/2005 dated 23.05.2007. The said appeal before the High Court arose out of an award passed by the Workmen's Compensation Commissioner in its order dated 29.12.2004 in WCD/113/NWD/02. The Workmen's Compensation Commissioner determined the compensation payable to the appellant herein in a sum of Rs.2,20,280/- along with another sum of Rs.2500/- as funeral charges under Section 4(4) of the Workmen's Compensation Act. A separate show-cause-notice was issued for payment of interest and penalty. The respondent herein preferred the abovesaid appeal in FAO No.184/2005 in which the High Court passed the impugned order setting aside the order passed by the Commissioner. It is in the abovesaid background the appellant-claimant has come forward with this appeal.

3. At the very outset, it is required to be stated that the appellant claimed himself to be the adopted son of the deceased Jeet Singh @ Ajit Singh. According to the claimant the deceased Jeet Singh @ Ajit Singh was employed as Truck Driver by the second respondent herein to drive truck bearing No.DL-IG-8255. It is stated that in July 2002 the deceased Jeet Singh @ Ajit Singh was assigned the

duty of driving the abovesaid truck in connection with the trade and business of the second respondent from Delhi to Nimiaghat, that on 17.07.2002 when the vehicle reached near about the destination Nimiaghat, District Giridih, the deceased suffered a health set-back and therefore he parked the vehicle on the road side of a nearby hotel. It is further stated that immediately after parking the vehicle he fainted and the persons nearby took him to the hospital where the doctors declared that he was brought dead. An FIR was stated to have been lodged with the police and thereafter the postmortem was conducted at Civil Hospital, District Giridih. The said truck was insured with the first respondent herein. In the abovesaid background the appellant preferred the application before the Commissioner of Workmen's Compensation, Delhi contending that the death of the deceased was in the course of his employment with the trade and business of the second respondent and that his death was due to stress and strain while driving the said truck continuously over a period of time. It was further claimed that at the time of his death the deceased was drawing wages at the rate of Rs.3091/- per month apart from a sum of RS.50/- per day as allowances and in all a sum of Rs.4591/- per month. The age of the deceased was stated to be 45 years at the time of his death. Appellant also claimed interest @ 12% p.a from the date of accident till realization apart from claiming penalty.

4. The claim of the appellant was resisted by the first respondent substantively on two grounds. In the first place it was contended that the appellant had no locus to file the claim petition inasmuch as he was not a dependant. It was then contended that the death of the deceased was due to natural causes and that there was no CAUSAL CONNECTION between the death of the deceased and that of his employment. The specific stand of the first respondent was that the deceased was an unmarried person, that on that day he was not driving the vehicle and that one Bhure Singh s/o Dharam Pal Singh was driving the truck in question and that no accident took place. The jurisdiction of the Commissioner was also questioned.

5. Before the Commissioner the biological father of the appellant examined himself as a witness who was cross-examined on behalf of the respondents. One Anil Sharma s/o the second respondent gave evidence on his side who was cross-examined by the counsel for the appellant. On behalf of the first respondent one A.B. Dutta was examined. On behalf of the appellant Exhibits AW1/1 to AW1/7 and AW1/R were marked. AW1/1 is the copy of FIR, AW1/2 is the copy of postmortem report, AW1/3 is the copy of insurance policy, AW1/4 is the copy of registration certificate, AW1/5 and AW1/6 are copies of ration card, AW1/7 is the copy of affidavit of Sh. Santokh Singh regarding the age and name of the deceased and AW1/R is the Adoption Deed.

6. The Commissioner repelled both the contentions of the respondents, namely, about the locus of the appellant as well as the CAUSAL CONNECTION of the death of the deceased with that of his employment and awarded the compensation as mentioned above. The learned Judge, however, held that the death of the deceased was due to natural causes and it had no CAUSAL CONNECTION with his employment and also held that the adoption of the appellant was not proved.

7. We heard Mr. R.K. Nain, learned counsel for the appellant and Shri M.K. Dua, learned counsel for the respondent(s). Learned counsel for the appellant strenuously contended that the impugned judgment of the High Court is liable to be set aside on both the grounds. According to learned

counsel when once the employment of the deceased with the second respondent was proved there was every justification for the Commissioner in having held that the death of the deceased was in the course of his employment in an accident arising out of such employment. It was then contended that the learned Judge failed to consider the evidence which was placed before the Court relating to valid adoption of the appellant by the deceased in a ceremony held for that purpose where the biological father gave appellant in adoption when he was three years old which was accepted by the deceased to be his adopted son. The learned counsel relied upon the decisions in Lakshman Singh Kothari V. Smt. Rup Kanwar - AIR 1961 SC 1378, Messrs Mackinnon Mackenzie & Co. Pvt. Ltd. V. Ritta Farnandes - 1969 A.C.J. 419, Mackinnon Mackenzie & Co. Pvt. Ltd. V. Ibrahim Mahmmod Issak 1969 A.C.J. 422, State of Rajasthan V. Ram Prasad and another - 2001 A.C.J. 647, Anand Bihari and others V. Rajasthan State Road Trans. Corpn. and another - 1991 A.C.J. 848, Lalo Devi V. Superintendent of Mines -1988 ACJ 886 and Shakuntala Chandrakant Shreshti V. Prabhakar Maruti Garvali & another - IV (2006) ACC 769 (SC) in support of his submission.

8. Though notice was duly served on the second respondent, he did not evince any interest in contesting this appeal. Learned counsel for the first respondent in his submissions contended that the judgment of the High Court does not call for any interference. According to learned counsel since there was no accident and the death of the deceased was due to natural causes, no compensation was payable under the Workmen's Compensation Act. Learned counsel also contended that the adoption of the appellant by the deceased was not proved in the manner known to law.

9. Having heard learned counsel for the respective parties and having perused the judgment of the learned Judge as well as that of the Workmen's Compensation Commissioner and all other material papers placed before us, we find that the judgment of the learned Judge cannot be sustained.

10. In the first instance we wish to deal with the issue relating to validity of the adoption of the appellant since if only his adoption is held to be valid there is scope for examining his right to claim compensation over the death of the deceased as his adopted son. In Hindu Law in the celebrated decision of this Court reported in Lakshman Singh Kothari (supra), the legal requirement for a valid adoption has been succinctly stated in paragraph 10 which reads as under:

> "10. The law may be briefly stated thus: Under the Hindu law, whether among the regenerate caste or among Sudras, there cannot be a valid adoption unless the adoptive boy is transferred from one family to another and that can be done only by the ceremony of giving and taking. The object of the corporeal giving and receiving in adoption is obviously to secure due publicity. To achieve this object it is essential to have a formal ceremony. No particular form is prescribed for the ceremony, but the law requires that the natural parent shall hand over the adoptive boy and the adoptive parent shall receive him. The nature of the ceremony may vary depending upon the circumstances of each case. But a ceremony there shall be, and giving and taking shall be part of it. The exigencies of the situation arising out of diverse circumstances necessitated the introduction of the doctrine of delegation; and, therefore, the parents, after exercising their volition to give and take the boy in

> adoption, may both or either of them delegate the physical act of handing over the boy or receiving him, as the case may be, to a third party."

11. The said legal position has been consistently followed by this Court which can be mentioned by referring to a recent decision of this Court reported in M. Gurudas and others V. Rasaranjan and others - 2006 (8) SCC

367. Paragraphs 26 and 27 are relevant for our purpose which read as under:

> "26. To prove valid adoption, it would be necessary to bring on record that there had been an actual giving and taking ceremony. Performance of "datta homam" was imperative, subject to just exceptions. Above all, as noticed hereinbefore, the question would arise as to whether adoption of a daughter was permissible in law.
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> 27. In Mulla's Principles of Hindu Law, 17th Edn., p. 710, it is stated:
>
> "488. Ceremonies relating to adoption.—(1) The ceremonies relating to an adoption are—
>
> (a) the physical act of giving and receiving, with intent to transfer the boy from one family into another;
>
> (b) the datta homam, that is, oblations of clarified butter to fire; and
>
> (c) other minor ceremonies, such as putresti jag (sacrifice for male issue).
>
> (2) The physical act of giving and receiving is essential to the validity of an adoption.

As to datta homam it is not settled whether its performance is essential to the validity of an adoption in every case.

As to the other ceremonies, their performance is not necessary to the validity of an adoption.

(3) No religious ceremonies, not even datta homam, are necessary in the case of shudras. Nor are religious ceremonies necessary amongst Jains or in the Punjab."

12. In this context, it will be worthwhile to note the requirement of registration of an Adoption Deed. Section 17 of the Registration Act specifically refers to the documents of which registration is compulsory. The deed of adoption is not one of the documents mentioned in sub-section 1 of Section 17 which mandatorily required registration. Sub-section 3 of Section 17 only refers to the mandatory requirement of registration of an authorization that may be given for adopting a son executed after 01.01.1872 if such authorization was not conferred by a Will. Dealing with the said provision relating to authorization, it has been held in the decision reported in Vishvanath Ramji Karale V. Rahibai Ramji Karale and others - AIR 1931 Bombay 105 by a deed of adoption as distinguished from

authority to adopt does not require registration.

13. Keeping the above statement of law in mind as regards the procedure to be followed for a valid adoption and the statutory stipulation that an adoption deed does not require registration, the claim of the appellant as the adopted son of the deceased requires to be considered. We find from the record that the appellant has produced Exhibit AW1/R which is the copy of the Adoption Deed. To appreciate the claim of the appellant in the proper perspective the contents of the said document can be usefully referred to which reads as under:

> "TRUE TRANSLATION IN ENGLISH Stamp ADOPTION DEED
>
> 1. Ajit Singh son of Surta Singh son of Deva Singh, am residing at village Dhariwal Kalan, Tehsil & Distt-Gurdaspur, Punjab (hereinafter called the first party). That I am unmarried so I have no children. Keeping in mind that in absence of the children one becomes without any care. Hence, for the purpose of proper maintenance a son is necessary. So, I have thought it fit to take Master Parampal son of Sh. Santokh Singh and Smt. Nirmal Kaur (hereinafter called the second party) resident of village Dhariwal Kalan in adoption and they have decided to give. Master Parampal's date of birth is 8-12-1996. His bringing up is being done by me and I am planning to send him to school. For the interest of his health and medication I myself do care. Parampal Singh is a very obedient boy and he always remains obedient to me and show me utter respect.

I always have a great affection for him. I want that whatever I leave behind be owned by Parampal Singh. I, in the presence of all respected persons and Panchayat, adopt Master Parampal Singh as my son and in the ceremony goods and sweets are distributed for the happiness of one and all.

Adoption Deed is reduced in writing for the purpose of proof.

First party	Second party
Ajit Singh LTI	Sd/-
Sd/- Gurbax Singh	Nirmal Kaur
Sarpanch 15/2/1999	Sd/-
Gram Panchayat Seal & Stamp	
Dhariwal Kalan	
Witnesses:-	Witnesses:-
Sd/-	Sd/-
Nishan Singh	Tarsem Singh
S/o-Dayal Singh	S/o-Bawa Singh
Vill- Chhina Retwala	R/o-Dhariwalkalan
15/2/1999	Sd/-
	Karnail Singh
	Nambardar
	Vill-Kallu Sohal"

14. The biological father of the appellant filed his proof affidavit on behalf of the appellant and offered himself for cross-examination. In the said affidavit it was specifically mentioned that the appellant was the dependent of the deceased workman as his adopted son. In the course of the cross-examination of the appellant by the respondents, the witness produced the original Adoption Deed along with the photocopy and after verifying with the original the photocopy was marked as Exhibit AW1/R. The relevant part of cross-examination as regards the adoption of the appellant can be extracted which are as under:

> "……It is correct that Ajit Singh is my elder brother. At the time of writing of this Adoption Deed there were 15-20 persons present. Those who were present were known to me. This Adoption Deed was written by "SARPANCH OF THE VILLAGE" Shri Gurbux Singh. At the time of writing of this 'Adoption Deed' no mantra ceremony was done. It is wrong to say that at the time of writing of this 'Adoption Deed' Ajit Singh was not present. 'Adoption Deed' exbt. AW1/R at point 'A' my signatures are there. At point 'B' & 'C' there are signatures of witnesses. At point 'D' there was signature of SARPANCH. At point 'E' there are signatures of another witness. Signatures are of only five persons. Apart from 15- 20 people there were some women as well. It is wrong to say that this 'Adoption Deed' has been written afterwards. At the time of writing of this 'Adoption Deed' Parampal was 3 years old. It is wrong to say that I am deposing falsely."

15. Conspectus consideration of the deed of adoption and the oral evidence led on behalf of the appellant, we find that there was a simple ceremony though not a mantra ceremony held in which the deceased participated wherein it was expressed that the deceased being a bachelor thought it fit to take the appellant in adoption for which the biological parents of the appellant were also willing to give him in adoption. In the Adoption Deed it was specifically mentioned that the process of adoption was carried out in the presence of respected persons of the Panchayat in a ceremony where goods and sweets were distributed in commemoration of the function of adoption. It has come in evidence that the Adoption Deed was written by Gurbux Singh on 15.02.1999 who was the Sarpanch of the village at that point of time. The left thumb impression of the deceased was found affixed in the Adoption Deed which was signed both by the biological parents apart from three witnesses, namely, Nishan Singh s/o Dayal Singh of village Chhina Retwala, Tarsem Singh s/o Bawa Singh r/o Dhariwalkalan and Karnail Singh Nambardar of village Kallu Soha. It was stated that about 15 to 20 persons apart from women folk were present at the time when the adoption ceremony was held. The suggestion, that the deed was written later on, was duly denied by the witnesses. It was also stated that the appellant was just three years old at the time when the adoption took place. Further Exhibits AW1/5 and AW1/6 are the copies of ration cards in which it is mentioned that the father of the appellant is Ajit Singh.

16. All the above factors which are born out by records as well as in the oral version of the witnesses, examined on behalf of the appellant, in our considered opinion conclusively proved that the

appellant was the adopted son of the deceased having been adopted as early as on 15.02.1999 i.e. long before the death of the deceased, namely, 17.07.2002. Unfortunately, the learned Judge in the impugned judgment has completely misled himself by rejecting the claim of adoption by holding that the document was not registered with the Tahsildar, that no ceremony was held, that the adoptive father was not present, that there was no giving and taking of the adopted son and, therefore, the adoption of the appellant by the deceased not proved. On the contrary, as stated above, we find that everyone of the prescription required for a valid adoption were very much present in the form of both oral and documentary evidence on record and consequently the conclusion of the learned Judge in having held that the appellant was not the adopted son of the deceased cannot be sustained and the same is set aside. Having reached the above conclusion, we proceed to deal with the claim of the appellant on merits.

17. On merits to retrace the facts, the deceased Jeet Singh @ Ajit Singh was employed as truck driver by the second respondent. His services were utilized for driving the truck belonging to the second respondent bearing No.DL-IG-8255. The deceased was driving the said truck in connection with the commercial transport operation of the second respondent from Delhi to Nimiaghat on 17.07.2002. According to the claimant when the truck reached the near about of Nimiaghat, District Giridih, the deceased felt giddy and, therefore, parked the vehicle on the road side near a hotel and soon thereafter he stated to have fainted. The deceased was removed to a nearby hospital where the doctors declared him brought dead. An FIR was lodged with the Police Station, Nimiaghat in FIR No.7/2002 dated 18.07.2002. The postmortem was stated to have been conducted on 19.07.2002 and thereafter the dead body was taken to his native place for performing last rites. The claimant in his application before the Commissioner submitted that the death of the deceased was due to the strain and stress of continuous driving in the course of his employment with the second respondent, that the vehicle which he was driving bearing No.DL-IG-8255 was insured with the first respondent vide covering note No.0968499 for the period of 14.02.2002 to 13.02.2003 and that an additional premium was also paid for coverage of compensation payable under the Workmen's Compensation Act. The claimant, as an adopted son of the deceased, claimed compensation as his dependant.

18. As far as the merits of the claim was concerned, the stand of the first respondent in its written statement was that the deceased was not in the employment of the second respondent, that no accident took place in the course of the employment of the deceased with the second respondent, that the deceased was not holding a valid license at the time of alleged accident, that the deceased was under the influence of alcohol or drug at the time of alleged accident and, therefore, no compensation was payable and the first respondent was not liable to pay any compensation. The second respondent also took the stand in his written statement that the deceased was not in his employment and that he was not in his professional visit in the truck bearing No.DL-IG-8255 to Nimiaghat. It was also stated that one Bhure Singh s/o Dharam Pal Singh was driving the said truck and that in all possibilities the said Bhure Singh might have given lift to the deceased and the deceased might have died due to heavy dose of drug with tea.

19. On behalf of the first respondent its Divisional Manager filed his proof affidavit while on behalf of the second respondent one Anil Sharma was examined. As far as the employment of the deceased was concerned, the Commissioner has noted that the FIR which was marked as Exhibit AW1/1

disclose that the second driver Bhure Singh himself admitted therein that the deceased was the senior driver who was driving the vehicle at the time of his death. As regards the said piece of evidence contained in AW1/1 nothing was brought out in his evidence either by way of trip sheet or attendance register or payment of wages register or any other document to show that the deceased was not in the employment of the second respondent at any point of time or on the fateful day. The Commissioner also noted that there was no cross-examination of WW1/A Santokh Singh on that issue. On the other hand RW.1 Anil Sharma in his cross-examination admitted that a sum of Rs.10,000/- was given to the family of the deceased for cremation purposes. Therefore, the issue relating to the employment of the deceased by the second respondent as found to have been established before the Commissioner cannot be assailed.

20. Once we cross the said hurdle only other question to be considered is whether death of the deceased was in an accident arising out of and in the course of his employment with the second respondent? It is common ground that the vehicle which was driven by the deceased did not meet with any road accident on 17.07.2002. As a matter of fact, the deceased while driving the vehicle from Delhi to Nimiaghat when reached near the destination, namely, Nimiaghat felt giddy and thereafter stated to have collapsed as he was found in a faint condition in the vehicle which he managed to park on the road side.

21. The entitlement to claim compensation is therefore dependent on fulfillment of the stipulations contained in Section 3(1) of the Workmen's Compensation Act, which read as under:

> "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) ....
>
> b) ....
>
> i) ....
>
> ii) ....
>
> iii) ...."

22. However, there are decisions of the English Court as early as of the year 1903 onwards stating that unlooked-for mishap or an untoward event which is not expected or designed should be construed as falling within the definition of an "accident" and in the event of such "untoward" "unexpected" event resulted in a personal injury caused to the workman in the course of his employment in connection with the trade and business of his employer, the same would be governed

by the provisions of Section 3 of the Workmen's Compensation Act. Such a legal principle evolved from time immemorial got the seal of approval of this Court and for this purpose we can refer to the celebrated decision in Ritta Farnandes (supra). After referring to the decision of House of Lords in Clover Clayton & Co. V. Hughes reported in 1910 A.C. 242 this Court referred to the relevant passage in the decision of House of Lords in paragraph 4, which reads as under:

> "4. Even if a workman dies from a pre-existing 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 where the deceased, whilest 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:
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> "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 Macnanghten'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."

23. In a recent decision of this Court in Shakuntala Chandrakant Shreshti (supra), the factors to be established to prove that an accident has taken place have been culled out and stated as under in paragraph 28:

> "28. In a case of this nature to prove that accident has taken place, factors which would have to be established, inter alia, are:
>
> 1. stress and strain arising during the course of employment
>
> 2. nature of employment

3. injury aggravated due to stress and strain"

24. In Mallikarjuna G. Hiremath V. Branch Manager, Oriental Insurance Co. Ltd. and another reported in AIR 2009 SC 2019 the principles to attract Section 3 of the Workmen's Compensation Act have been stated as under in paragraph 14:

> "14. There are a large number of English and American decisions, some of which have been taken note of in ESI Corpn's case (supra) in regard to essential ingredients for such finding and the tests attracting the provisions of Section 3 of the Act. The principles are:
>
> 1) There must be a casual connection between the injury and the accident and the accident and the work done in the course of employment.
>
> 2) The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury.
>
> 3) If the evidence brought on records establishes a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the fact of each case."

25. The Madhya Pradesh High Court in Smt. Sundarbai V. The General Manager, Ordnance Factory, Khamaria, Jabalpur reported in 1976 Lab I.C. 1163 in paragraph 10 the principles have been culled out as under:

> "10. On a review of the authorities, the principles insofar as relevant for our purposes may be stated as follows:
>
> (A) Accident means an untoward mishap which is not expected or designed by the workman. "Injury" means physiological injury.
>
> (B) "Accident" and "injury" are distinct in cases where accident is an event happening externally to a man; e.g. when a workman falls from a ladder and suffers injury. But accident may be an event happening internally to a man and in such cases "accident" and "injury" coincide. Such cases are illustrated by bursting of an aneurism, failure of heart and the like while the workman is doing his normal work.
>
> (C) Physiological injury suffered by a workman due mainly to the progress of disease unconnected with employment, may amount to an injury arising out of and in the course of employment if the work which the workman was doing at the time of the occurrence of the injury contributed to its occurrence.

> (D) The connection between the injury and employment may be furnished by ordinary strain of ordinary work if the strain did in fact contribute to or accelerate or hasten the injury.
>
> (E) The burden to prove the connection of employment with the injury is on the applicant, but he is entitled to succeed if on a balance of probabilities a reasonable man might hold that the more probable conclusion is that there was a connection."

26. Again in yet another celebrated decision of this Court in Ibrahim Mahmmod Issak (supra) this Court has set down the principles applied in such cases as under in paragraph 5:

> "5. To come within the Act the injury by accident must arise both out of and in the course of employment. The words "in the course of the employment" mean "in the course of the work which the workman is employed to do and which is incidental to it." The words "arising out of employment" are understood to mean that "during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered." In other words there must be a casual relationship between the accident and the employment. The expression "arising out of employment" is again not confined to the mere nature of the employment. The expression applies to employment as such to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises 'out of employment'. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act. In Lancashire and Yorkshire Railway Co. v. Highley, Lord summer laid down the following test for determining whether an accident "arose out of the employment." (Emphasis added)

27. 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 years 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 kms. 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 dependant solely upon his physical and mental resources & 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 life span. 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.

28. Having regard to the evidence placed on record there was no scope to hold that the deceased was simply travelling in the vehicle and that there was no obligation for him to undertake the work of driving. On the other hand, the evidence as stood established proved the fact that the deceased was actually driving the truck and that in the course of such driving activity as he felt uncomfortable he safely parked the vehicle on the side of the road near a hotel soon whereafter he breathed his last. 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. The appeal stands allowed. The order impugned is set aside. The order of the Commissioner for Workmen's Compensation shall stand restored and there shall be no order as to costs.

.....J. [T.S. Thakur] .....J. [Fakkir Mohamed Ibrahim Kalifulla] New Delhi;

December 14, 2012