Poonam Devi vs Oriental Insurance Co. Ltd. on 6 March, 2020

Equivalent citations: AIR 2020 SUPREME COURT 1305, AIRONLINE 2020 SC 332

Author: Navin Sinha

Bench: Navin Sinha, Ashok Bhushan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s).1836 OF 2020
(arising out of SLP (C) No(s).33445 of 2014)

POONAM DEVI AND OTHERS ...APPELLANT(S)

VERSUS

ORIENTAL INSURANCE CO. LTD. ...RESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

The appellants are the legal heirs of the deceased. They were granted compensation of Rs.4,45,420/□with interest at the rate of 12 per cent by the Commissioner, Workmen's Compensation Act from the date of accident up to the date of deposit in addition to a penalty imposed on the employer under Section 4A(3)(b) of the Workmen's Compensation Act, 1923 (hereinafter called "the Act"). The High Court on 09.05.2014 has allowed the appeal of the respondent holding that the death occurred during the course of employment but did not arise out of the employment.

2. The deceased was aged 21 years, in the employment of respondent no.2 (since deleted), and was driving her TATA 407 vehicle bearing registration No.UP 15P 1689 on 11.06.2003 from Ambala to Meerut, a distance of approximately 200 Kms. At about 12.30 PM, when he approached the bridge near village Fatehpur, the deceased went to the Yamuna canal to fetch water and also to have a bath. Unfortunately, he slipped into the canal and died. The vehicle was insured with the respondent Insurance Company. P.W.2, who was standing near the bridge, deposed that the deceased had gone

to fetch water in a can along with the cleaner who tried to save him, but both slipped into the canal. The Workmen's Compensation Commissioner by order dated 12.12.2005 allowed the claim as aforesaid.

3. The High Court in appeal by the Insurance Company held that the deceased may have died during the course of the employment but death did not arise out of the employment, as bathing in the canal was not incidental to the employment but was at the peril of the workman. There was no casual connection between the death of the workman and his employment. He had gone to fetch water for personal consumption and it was not his case that the truck was over heated.

4. Mr. Vikas Bhadana, learned counsel for the appellants, submitted that there was a causal connection of the death with the employment. In the extreme heat of the month of June at noon, a presumption would arise that the deceased had gone to the canal to fetch water not only to cool the truck but also himself to ensure a proper and safe journey of the vehicle belonging to the employer and his own safety. Reliance was placed on Leela Bai and anr. vs. Seema Chouhan and anr., (2019) 4 SCC 325.

5. Mr. Ajay Singh, learned counsel for the respondent opposing the appeal, submitted that the High Court has rightly held that there was no casual connection between the death of the deceased with the employment. Merely because death may have occurred in the course of the employment will not suffice unless it is established that it was incidental and arose out of the employment. Reliance was placed on Malikarjuna G. Hiremath vs. Branch Manager, Oriental Insurance Company Limited and another, (2009) 13 SCC 405.

6. We have considered the submission on behalf of the parties and have also perused the impugned orders as also the case law cited before us.

7. The Workmen's Compensation Act, 1923 (now christened as "Employee's Compensation Act, 1923") is a piece of socially beneficial legislation. The provisions will therefore have to be interpreted in a manner to advance the purpose of the legislation, rather than to stultify it. In case of a direct conflict, when no reconciliation is possible, the statutory provision will prevail only then.

8. Relevant to the discussion is Section 3 of the Act. The relevant extract reads as follows:

> "3. Employer' s liability for compensation.□(1) If personal injury is caused to a workman 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:
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> XXXX"

9. In Manju Sarkar & Ors. vs. Mabish Miah & Ors., (2014) 14 SCC 21, the deceased was driving the employer's truck from Agartala to Churaibari FCI godown. When he reached near Dharam Nagar, he got down to make arrangements for repairing some mechanical problems in the truck when he was

hit on the road by another vehicle and died in the hospital. Applying the principle of notional extension, it was held that death occurred in the course of employment relying upon B.E.S.T. Undertaking vs. Agnes, AIR 1964 SC 193, at paragraph 12 "Under Section 3(1) of the Act the injury must be caused to the workman by an accident arising out of and in the course of his employment. The question, when does an employment begin and when does it cease, depends upon the facts of each case. But the Courts have agreed that the employment does not necessarily end when the "down tool" signal is given or when the workman leaves the actual workshop where he is working. There is a notional extension at both the entry and exit by time and space. The scope of such extension must necessarily depend on the circumstances of a given case. As employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and, egress to and from the place of employment."

10. More recently in Daya Kishan Joshi & Anr. vs. Dynemech Systems Pvt. Ltd., (2018) 11 SCC 642, the deceased was employed as an engineer for promoting sales and installation of products which required him to move around in the field. While returning from field work, he met with an accident resulting in death. Holding that his being on the road related to the nature of his duties, not only the injury was caused during the currency of the employment but also arose out of the employment.

11. Coming to the facts of the present case, the deceased was driving the truck of respondent no.2 from Ambala to Meerut. Indisputably he was in the course of his employment. We can take judicial notice of the fact that considering the manufacturer's specification, the cabin of the truck was not air conditioned and would have been a baking oven in the middle of the afternoon in the sultry monsoon heat of June 2003, when the temperature was touching 42.60C in Yamunagar (Haryana) (source: weatheronline.in). It was a compulsion for the deceased to stay fresh and alert not only to protect the truck of respondent no.2 from damage but also to ensure a smooth journey and protect his own life by safe driving. We can also take judicial notice of the fact that the possibility of the truck also requiring water to prevent overheating cannot be completely ruled out. In these circumstances, can it be said that the act of the deceased in going to the canal to fetch water in a can for the truck and to refresh himself by a bath before continuing the journey was not incidental to the employment? Every action of the driver of a truck to ensure the safety of the truck belonging to the employer and to ensure his own safety by a safe journey for himself has to be considered as incidental to the employment by extension of the notional employment theory. A truck driver who would not keep himself fresh to drive in such heat would be a potential danger to others on the road by reason of any bonafide errors of judgement by reason of the heat. The theory of notional extension noticed in the Agnes (supra) and followed in Leela Bai (supra) is extracted hereunder:

> "9. In the facts of the present case and the nature of evidence, there was a clear nexus between the accident and the employment to apply the doctrine of "notional extension" of the employment considered in Agnes (supra) as follows:
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> "...It is now well□settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded

> as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of a workman, keeping in view at all time this theory of notional extension."

12. In Leela Bai (supra), the deceased having completed his journey as a driver stayed back on the roof of the bus to ensure early scheduled departure the next morning by not going home. While he was coming down the roof of the bus he slipped and died. It was held at paragraph 7 as follows:

> "7. In the facts of the case, and the evidence available, it is evident that the deceased was present at the bus terminal and remained with the bus even after arrival from Indore not by choice, but by compulsion and necessity, because of the nature of his duties. The route timings of the bus required the deceased to be readily available with the bus so that the passenger service being provided by Respondent 1 remained efficient and was not affected. If the deceased would have gone home every day after parking the bus and returned the next morning, the efficiency of the timing of the bus service facility to the travelling public would definitely have been affected, dependent on the arrival of the deceased at the bus□stand from his house.

Naturally that would bring an element of uncertainty in the departure schedule of the bus and efficiency of the service to the travelling public could be compromised. Adherence to schedule by the deceased would naturally enure to the benefit of Respondent 1 by enhancement of income because of timely service. It is not without reason that the deceased would not go home for weeks as deposed by the appellant.

Merely because the deceased was coming down the roof of the bus after having his meal, cannot be considered in isolation and interpreted so myopically to hold that he was off duty and therefore would not be entitled to compensation."

13. We see no reason why the application of the theory of notional extension will therefore not apply in the facts of the present case also.

14. Malikarjuna (supra) is distinguishable on its own facts as the deceased had completed his journey from Siraguppa to the Gurugunta Angreshwar temple, after which he went to the pond and while taking a bath slipped and drowned. The case is completely distinguishable on its own facts.

15. We, therefore, find the order of the High Court to be unsustainable. It is set aside. The order of the Workmen's Compensation Commissioner dated 12.12.2005 is restored. The payments in terms of the order of the Workmen's Compensation Commissioner be made to the appellants within a period of six weeks from today. Since respondent no.2 stands deleted, the question of payment of penalty by her does not arise.

16. The appeal is allowed.

.....J. (Ashok Bhushan) .....J. (Navin Sinha) New Delhi, March 06, 2020.