Vijay Bahadur Singh & Anr vs Employees State Insurance Corporation ... on 30 June, 2025

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgement delivered on: 30.06.2025

+ FAO 236/2013 and CM APPL. 45968/2019

VIJAY BAHADUR SINGH & ANR .....Appellants

versus

EMPLOYEES STATE INSURANCE CORPORATION
& ORS .....Respondents

Advocates who appeared in this case
For the Appellants : Dr. M. Y. Khan, Adv.

For the Respondents : Mr. K P Mavi, Adv.

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J INTRODUCTION:

1. The present Appeal has been filed under Section 82 of the Employee State Insurance Act, 1948 („ESI Act) being aggrieved by the final order and judgment dated 09.04.2013 („impugned order) passed by the Employee State Insurance Court ('ESI Court') in Suit No. 03/2011 filed by the Appellants/Vijay Bahadur Singh and Raj Kumari, who are the parents of Mr. Sunil Kumar („the deceased). The impugned order holds that the death of the deceased was for reasons not connected with the employment and, therefore, there was no accident or an occupational disease arising out of and in the course of the employment.

2. By impugned order dated 09.04.2013, the learned ESI Court dismissed the suit of the Appellants with the finding that merely because the deceased was insured under the ESI Act and was residing at a place which was given to him as a temporary residence cannot be sufficient to maintain the claim of the Appellants within the provisions of the ESI Act.

3. The Appellants have assailed the impugned order on the ground that the learned ESI Court failed to consider the principle of notional extension by which the liability under the ESI Act is not limited to the physical workplace but extends beyond the workplace as long as a casual nexus can be drawn between the accident and

employee s employment.

The Appellants have prayed for setting aside of the impugned order and sought compensation to be paid to the Appellants.

FACTUAL BACKGROUND:

4. On 01.12.2005, the deceased was employed as an administrative officer by the Management of Respondent No. 2/ M/s. Himgiri Cars (P) Ltd. and was insured under the ESI Act. The deceased was also employed as a night in-charge of the stockyard of the Respondent No. 2 in place of Mr. Dharmender Singh („accused'). The accused used to be the in-charge of the stockyard of the Respondent No. 2 and was replaced by the deceasedon the allegations of misconduct of the accused.

5. On 05.12.2008, the deceased after finishing his shift as the Administrative Officer at the premises of the Respondent No. 2, went to the stockyard of the Respondent No.2, where he was brutally murdered by the accused around 10:00 pm in the presence of one Mr. Shakti Singh, who then informed the police of the act of the accused. Mr. Shakti Singh, testified in front of the police and an FIR bearing no. 352/08 was lodged against the accused under Section 302 of the Indian Penal Code, 1860, by the Alipur Police Station, North West District, Delhi and the accused was subsequently arrested.

6. The Appellant No. 1/ the father of the deceased issued a Legal Notice dated 15.07.2009 addressed to the Respondent No.2 seeking compensation of 20 Lakhs on the ground that the deceased was working for Respondent No. 2 at the time of his death, which was as a result of removal of the accused from his position as the night in-charge of the stockyard and allotting the room allotted to the accused to the deceased. The Respondent No. 2 did not reply to the aforesaid notice.

7. The Appellant No.1 filed a complaint under Section 10 of the Workman s Compensation Act, 1923, which subsequently got converted into the claim under Section 75 of the ESI Act. On 09.04.2013, the learned ESI Court passed the impugned order, wherein the learned ESI Court dismissed the claim of the Appellants with the findings that in the facts and circumstances, the claim for compensation under the ESI Act cannot be allowed.

SUBMISSIONS OF THE APPELLANTS:

8. Dr. M. Y. Khan, the learned counsel for the Appellants has submitted that the deceased was at the stockyard premises of the Respondent No.2 in the discharge of his duties as night in-charge of the stockyard replacing the accused, who was relieved of his duties as night in-charge due to misconduct. The room which was given to the deceased was taken from the possession of the accused, who started having a grudge

against the deceased. It was submitted that the deceased lost his life because of his employment, working as night in-charge of the Respondent No.2. In the circumstances, the deceased was on duty at the godown and was murdered by another employee of the Respondent No. 2.

Accordingly, the death of the deceased was within the ambit of "out of and in the course of employment" as per the provisions of the ESI Act.

9. The Appellants submitted that the learned ESI Court failed to apply the principle of notional extension while adjudicating the dispute and dismissing the claim of the Appellants on the ground that the deceased was not at the place where he was discharging his duties, as the Administrative Officer, when he was admittedly at the stockyard owned and managed by Respondent No. 2 and, therefore he was murdered during the course of his employment.

10. The Appellants submitted that as per the provisions of Section 51A of the ESI Act, there is a presumption under the law, that an accident arising in the course of employment is presumed in absence of evidence to the contrary to have arisen in the course of employment.

11. The Appellants relied upon the testimony of the Human Resources Manager of the Respondent No. 2, in the criminal case against the accused under Section 302 of the IPC, wherein the Manager testified to the fact that the deceased was indeed appointed as the night in-charge for the stockyard, and that the accused was replaced by the deceased and was allotted the same room in the stockyard that was earlier occupied by the accused as night in-charge of the stockyard of the Respondent No.2.

12. The Appellants submitted that the learned ESI Court despite observing that the purpose of the ESI Act is the welfare of the employees, failed to provide the compensation as to the death of the deceased happened during the course of his employment.

13. The Appellants submitted that the murder of an employee during the discharge of his employment must be covered under the definition of „employment injury under Section 2(8) of the ESI Act.

14. The Appellants relied upon the judgment in the case of M/s. National Insurance Co. Ltd Vs. Smt. Sheela Rani, 2012 (132) FLR 686 (P&H), to support the submission that the murder of an employee during the course of his employment, in absence to the contrary was held to have died during the course of employment. The Appellants further relied upon Regional Director ESIC, Trichur v. Lakshmi, 1979 LAB. I.C. 167 (Kerala)and Harjinder Kaur v. ESIC, (1987) 55 FLR 772 (P&H), to argue that there just needs to be a casual relationship between the accident and the employment for the deceased to be eligible for compensation under the provisions of the ESI Act.

SUBMISSIONS OF THE RESPONDENTS:

15. Mr. K. P. Mavi, the learned counsel for the Respondent No.1 submitted that the Appellants Suit was barred by limitation and the death of the deceased was homicide, which had no direct or

indirect connection with his employment under Section 2 (8) of the ESI Act.

16. It was further submitted that the working hours of the deceased were limited to daytime and the deceased was not in the course of the employment at the stockyard. The room at the stockyard was allotted to the deceased as a gesture of goodwill as he had requested them for accommodation as he was having problems with his landlord.

17. The Respondent No.1 submitted that the deceased was murdered by the accused due to a personal rivalry rather than a dispute arising in the course of employment. The Respondent No. 1 relied upon the decision in the case of Regional Director, ESIC v. Francis De Costa, AIR 1997 SC 432 which held as under:

> "7. Unless an employee can establish that the injury was caused or had its origin in the employment, he cannot succeed in a claim based on section 2(8) of the Act. The words "accident ... arising out of ... his employment" indicate that any accident which occurred while going to the place of employment or for the purpose of employment, cannot be said to have arisen out of his employment. There is no causal connection between the accident and the employment."

18. The Respondent No. 1 submitted that the murder of the accused was not covered as an accident and an employment injury under the provisions of Section 2(8) of the ESI Act and the incident of murder has no relationship to the employment of the deceased with the employer.

19. The Respondent No.1 submitted that the testimony of the Human Resources Manager of the Respondent No.2 in the criminal proceedings against the accused and the reason why the deceased was in the stockyard premises at the night of the murder has no bearing in the present proceedings as that the testimony given in another case cannot be relied upon in the present case.

20. None appeared for the Respondent Nos.2 to 5 and there has been no appearance for the Respondent Nos.2 to 5 during the previous hearings. Hence, the Respondent Nos.2 to 5 are proceeded ex-parte.

ANALYSIS AND REASONING:

21. Having considered the pleadings, documentary evidence, written submissions and the arguments made on behalf of the Appellants and Respondent No.1, there is no cavil that the deceased was employed by the Respondent No.2 in capacity as an Administrative Officer and was insured under the ESI Act. It is further admitted that the deceased was murdered byanother employee of the Respondent No.2, at the gate of the stockyard of the Respondent No.2. At the time of the murder of the deceased, he was admittedly residing at the room within the stockyard of the Respondent No.2.

22. Section 51A of the ESI Act provides that:

> "51A. Presumption as to accident arising in course of employment: For the purposes of this Act, an accident arising in the course of [an employee's] employment shall be presumed, in the absence of evidence to the contrary, also to have arisen out of that employment."

23. Accordingly, there is presumption under the ESI Act that if the accident arises during the course of employment, the same arises out of the employment, unless there is any contrary evidence on record.

24. In case of M/s. National Insurance Co. Ltd v. Smt. Sheela Ran, 2012 (132) FLR 686 (P&H), it is held that where a driver was murdered in cabin of truck, it was while in course of employment in absence of any contrary evidence.

25. In the present case, there is no evidence on record to show that the murder of the deceased was not arising out of or not in connection with the course of employment. In absence of any such evidence, the present case would be covered by the presumption under Section 51A of the ESI Act.

26. It is trite law that the Doctrine of Notional Extension will be applicable while deciding a case for compensation under welfare legislation like the ESI Act. The deceased was murdered at the gate of the stockyard of the Respondent No. 2 during the course of his employment as night in-charge of the stockyard of the Respondent No. 2 at the time of his death.

27. In Leela Bai v. Seema Chouhan, (2019) 4 SCC 325, the Supreme Court has examined that if the nature of employment required a person to be present at some place for the effective discharge of their duties, they shall be covered by the Doctrine of Notional Extension.

28. In Regional Director ESIC, Trichur v. Lakshmi, 1979 LAB. I.C. 167 (Kerala)and Harjinder Kaur v. ESIC, (1987) 55 FLR 772 (P & H), it is held that only a casual relationship is required between the accident and the employment for being eligible to receive the compensation within the provisions of the ESI Act.

29. In Rita Devi v. New India Assurance Co. Ltd., (2000) 5 SCC 113, the driver of the auto rickshaw was murdered with the intention of stealing his vehicle and his death was held as an „accidental murder for the purpose of compensation under the Motor Vehicles Act, 1988. It was observed that:

> "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 simpliciter, 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."

30. In Star Press v. Meena Devi, 2017SCC OnLine Del 7849 this Court has laid down the principles when an employee was murdered by his co-worker:

"31. Summary of the principles:

31.1. The term „accident is neither defined in the Employees' Compensation Act nor the General Clauses Act. According to the Black's Law Dictionary, the term „accident means an unforeseen untoward incident, which was not reasonably anticipated. 31.2. The 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 an accident on a given set of facts. The Supreme Court, in Rita Devi (supra) laid down the following test to determine whether a murder can be an accident:-- --

If the dominant intention of the crime is to kill the deceased, then the killing is a murder simpliciter. However, if the murder was not originally intended and is in furtherance of any other crime or consequential to some other crime, then it can be considered to be an accidental murder.

31.3. A murder can be an accident in cases where 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, because the deceased employee could not have anticipated that the unforeseen incident (murder) would happen to him. It will be an unlooked for mishap or an untoward event, which is not expected or designed and therefore, a murder can be an „accident from the point of view of the person who suffered from it is an accident. 31.4. If the employee could not and did not reasonably anticipate that the unforeseen incident (murder) would happen to him, it is an „accident . The word „accident excludes the idea of wilful and intentional act but the phrase would include an accidental happening so far as the employee was concerned.

31.5. The Employees' Compensation Act is a social beneficial legislation and has to be liberally construed. It was enacted to give succour to employees against injuries caused by accident. The object of the Act doesn't specify the applicability of the Act only in case of accidents by machines only. The injury caused by the act of another human being that result in fatal injuries tantamount to murder qua the assailant and an accidental act qua the employee. 31.6. A casual connection is necessary between the accident and the employment to hold that the accident arose out of employment. When the incident of murder takes place in the work place, then the presumption would be that the murder would have been on account of the employment; in the absence of any other evidence pointing out that it could not have been on account of employment.

31.7. If it is proved that the employee in the course of his employment has to be in a particular place, and by reason of his being in that particular place, he has to face a peril and the accident is caused

by reason of that peril which he has to face, then a casual connection is established between the incident and the employment. 31.8. Once the applicant has established that the deceased was at a particular place where he was assaulted and stabbed to death because of his employment, he has discharged the burden which the law places upon him. The law does not place an additional burden upon the applicant to prove that the peril which the employee faced and the accident which arose because of that peril was not personal to him but was shared by all the employees or the members of the public. 31.9. The Motor Vehicles Act, 1988 and the Employees' Compensation Act, 1923 are both beneficial enactments operating in the same field to provide compensation to the victims of the accidents and hence, the judicially accepted interpretation of the word „death in the Employees' Compensation Act is applicable to the interpretation of the word „death in the Motor Vehicles Act also."

31. Accordingly, the deceased could not and did not reasonably anticipate that the accused would commit his murder. As far as the deceased was concerned, the murder was an „accident as there was anticipation of the same by the deceased. Accordingly, it was an „accidental murder during the course of the employment of Respondent No 2. In view of the presumption under the law, the burden is on the Respondents to prove that the murder was outside the employment of the Respondent No. 2, which they have failed to discharge under the ESI Act.

32. Further, the casual connection between the accident and the employment has been established in the facts and circumstances of the case. Hence, the murder of the deceased was an accident and occurred during the course of his employment with Respondent No.2 for the purpose of the ESI Act. The reliance placed by the Respondent No.1 on Regional Director, ESIC v. Francis De Costa, AIR 1997 SC 432 is misplaced as it has been sufficiently proved that the deceased was at the stockyard during the course of his employment. The deceased was at the premises of the stockyard of the Respondent No.2 to perform his duties as the night in-charge of the stockyard at the time of his murder by accused, who was also an employee of Respondent No.2. There is no allegation or evidence on record to show that the deceased and the accused had any previous animosity for reasons extraneous to their employment with Respondent No.2.

33. The impugned order of the learned ESI Court dismissing the claim of the Appellants deserves to be set aside as the reasoning given by the learned ESI Court is contrary to the facts on record and the settled law. The deceased was murdered during the course of employment at the place he was working as night in-charge and the same was directly having connection and was arising out of and in connection with his employment with Respondent No. 2.

34. Given there is a direct connection between the employment and the accidental murder of the deceased during the course of his employment as the night in-charge of the stockyard of Respondent No.2, the Appellants are entitled to compensation under the ESI Act.

35. Section 46(d) read with Section 52 of the ESI Act read with Rule 58 of the Employees State Insurance (Central) Rules, 1950 („ESI Rules) entitles the dependents of the deceased insured employee who dies to an injury sustained in the course of his employment for periodical payments, along with funeral expenses as envisaged under Section 46(f) of the ESI Act read with Rule 59 of the

ESI Rules.

36. The Respondent No.1/ESIC is directed to settle the eligible Dependent s Benefits in accordance with law. The amount payable shall be calculated under Section 52 of the ESI Act read with First Schedule thereto and the applicable ESI Rules. The amount so determined as Dependent s Benefits shall be paid to the Appellants within a period of eight (8) weeks from the receipt of the copy of this order. The payment shall not be withheld on any ground whatsoever.

37. In view of the above, the impugned order dated 09.04.2013 passed by the learned ESI Court is hereby set aside with the aforesaid directions. This Appeal is, accordingly, allowed. The pending Application(s), if any, also stand disposed of. No orders as to costs.

TEJAS KARIA, J JUNE 30, 2025/ „A