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Court : Patna

Decided On : Dec-20-1995

Judge : R.N. Sahay, J.

Acts : Workmen's Compensation Act, 1923 - Sections 3

Appeal No. : M.A. No. 218/1991

Appellant : Project Officer, Sounda D. Colliery of Central Coal Fields Ltd. and anr.

Respondent : Presiding Officer, Labour Court and anr.

Advocate for Def. : C.S. Prasad, Adv.

Advocate for Pet/Ap. : M.M. Banerjee, Adv.

Disposition : Appeal dismissed

Judgement :

R.N. Sahay, J.

1. The wife of the deceased-workman late Dahari Koiri filed a claim application alleging that her husband met with an accident when he was on duty on March 10, 1989. He died on May 26, 1989 by accident arising out of and in course of his

employment. The deceased was aged 45 years and was drawing Rs.2,500/- per month. Immediately after he was injured he was taken for treatment in the C.C.L. Hospital. Register of minor accident reveals that the workman had superficial abrasion round left keen joint. He was prescribed 'belergon' on March 16, 1989 but his pain subsisted. He was given an injection. Doctor diagnosed his case to be 'dispepsia'. He had also breathing problem. Later it was suspected that the deceased was suffering from chronic renal failure on the basis of report dated April 29, 1989 the clinical diagnosis was polycistic kidney and malignant cell'. The workman died on May 6, 1989. The cause of death, according to the death certificate was 'trauma'(L) Kidney Polycistic disease of kidney and Renal failure.

2. The case of the appellant as disclosed in the letter dated March 20, 1991 written by Deputy Chief Mining Engineer, Saundadih to the Workmen's Compensation Commissioner, Hazaribagh is quoted below:-

'Kindly refer to your letter No. 721 dated March 6, 1991 on the above subject, in this connection it is stated that Shri Dahari Koiri, Loader, Bangarha Incline of Saunda 'D' East Mine sustained mild injury in the knee of the left leg while he was travelling underground with a loaded basket., a small piece of coal fell down from the basket and injured his knee. The accident took place at 10.05 p.m. on March 10, 1989. Shri Koiri was rendered first aid in the mine and sent to hospital at 10.30 p.m. on the same day. Shri Koiri was discharged from hospital on March 11, 1989 when his knee injury had been fully cured. Since he was complaining pain in the abdomen, he was referred to Gandhi Nagar hospital for further treatment. During the course of treatment he died in Gandhi Nagar hospital on May 26, 1989. He was not paid compensation because the cause of his death was not due to knee injury but his physical element. Photocopy of injury slip is enclosed herewith.'

3. The Labour Court as it appears from the reading of the order under appeal, was not prepared to accept the medical report in respect of the deceased-workman as there was divergence of opinion given by two medical officers of the CCL with regard to the cause of the death of the deceased. The Labour Court held the death certificate to be suspicious.

4. The learned Labour Court held that it is clear from the provision of Section 3 of the Workmen's Compensation Act that even if a workman after accident suffered from other ailments like in the instant case, which resulted in his death, his dependents are entitled for compensation. The Labour Court has drawn adverse inference against the appellants because no post morterm examination of the deceased was done to find out the exact cause of his death. He further found that the workman died due to negligence in treatment by the doctors of the appellants.

5. Section 3 of the Workmen's Compensation Act provides that if 'personal injury is caused to a workman by accident arising out of and in course of his employment his employer shall be liable to pay compensation in accordance with Chapter II of the Act.' Sub-Section (2) of Section 3 provides that 'if a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment or if a workman whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in part B of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment.... the contracting of the disease shall be deemed to be an injury by accident. Admittedly it is not a case under Sub-section (2) of Section 3.

6. The word 'accident' has been the subject matter of various decisions in India as well as in England. The more usual case of an accident in an event happening externally to a man, like an explosion in a mine, a collision tripping over floor obstacles, fall of roof or a man falling down from a ladder. The less obvious cases of accident are strain causing rupture, bursting of an aneurism, failure of the muscular action of the heart, exposure to a draught causing chill, exertion in a stroke hold causing apoplexy, shock causing neurasthenia etc. Lord Atkin called them 'internal accidents'. (See Fife Coal Co. Ltd....v. Young l940 2 ALL ER85(HL)).

7. What the Act, therefore, really intends to convey is what might be expressed as an 'accidental injury. But the common factor in all cases of accidents, whether external or internal, is some concrete happening at a definite point of time and an incapacity resulting from the happening. (See Bai Shakri v. New Manechowk Mills

Co. Ltd AIR 1961 Guj 34).

8. In Clayton & Co. Ltd. v. Hughes 1910 AC 242 the workman died due to rupture of an aneurism while doing his ordinary work in the ordinary way without any unusual exertion or strain. The aneurism was in such an advanced condition that it might have burst while the man was asleep, and a very slight exertion, or strain, would have been sufficient to bring about a rupture. Even so the House of Lords held that the rupture of aneurism was an injury by accident as it was an unexpected event so far as the workman was concerned and that this accident arose out of his employment as the strain of work in which he was engaged, however, ordinary it may have been, was in fact one of the contributing cases.

9. Sri C.S. Prasad counsel for the respondent has placed reliance on Divisional Personnel Officer, Western Rly., Jaipur v. Ashiya Begam reported in (I994-II-LLJ-795)(Raj) and contended that in the instant case there was casual connection between the injury sustained by the deceased and the cause which resulted in his death, still the dependents are entitled to claim compensation from the employer. In the aforementioned Rajasthan case, cited by Sri Prasad, a senior cook employed with Western Railway was performing duty in the Running Room. He used to cook on the cooking gas. While working in the room, there was an accident on account of the excessive gas inhaled on April 19, 1994 and he was admitted to hospital for treatment. He died on April 27, 1994. Dependents made an application claiming compensation. According to the Western Railway, the death of the employee was on account of hypertension, hemi-paresis, left side renal failure and pulmanory arrest according to the certificate issued by the doctor. The Commissioner for Workmen's Compensation held that working on the cooking stove could not be the immediate cause of death, but a situation could arise where their hard-working on cooking stove could lead to strain and accelerate the death. He took a view that the deceased died in the course of employment and the real cause of his death was excessive working on cooking gas and therefore awarded the compensation. This was challenged before the Rajasthan High Court. Mrs. Mohini Kapur, J. upholding the award held as follows: P798.

'In matters like the present one, it is not for the courts to look into the minute details of the pleadings and the evidence which has been produced in the court. But it is to be seen whether on broad analysis of the material before the court, it can be said that the accident which resulted in any injury was in the course of employment or out of employment. If it is accepted that the deceased was suffering from high blood pressure from last one year, his duties as cook in the Running Room added strain and this strain had a casual relationship with the cause of his death It was hypertension leading to other complications. This casual connection will not go away merely because the deceased died after a week from the accident. The natural result of the disease is to be considered in a general manner and it cannot be expected that the Doctor would be able to analyse each step in order to show how the deceased developed the disease and succumbed to the same.'

10. In Laxmibai Atma Ram v. Chairman and Trustee Bombay Port Trust (1954-I-LU 614)(Bom) it has been stated that if a workman dies as natural result of his disease from which he was suffering, there it could not be said that the death is out of his employment. But if the employment is a contributory cause or if the employment has accelerated the death or if it could be said that the death was due not only to the disease but it was coupled with the employment, men the employer will be liable and it cannot be said that death arose out of the employment.

11. In Kamalabai Chintamani v. Divisional Superintendent Central Railway (1971-I-LLJ-603)(Bom) the deceased was working as engine driver. He expired while on duty. The cause of death was found to be due to heart attack. The Bombay High Court held that the death of the railway engine driver while on duty cannot be said to arise out of his employment when there is no causal connection between his death and the employment but on the other hand there is clear and cogent evidence that he died due to heart failure and not on account of any particular strain due to his employment.

12. In Hindustan Steel Construction Ltd. v. Nuralsha Khatoon 1992 (II) LLN 250, a driver of ambulance suddenly developed a severe pain in the chest while changing the tyre of ambulance and because of that he died. It was held that death was

caused by disease coupled with employment and was not a natural death and the employer was liable for payment of compensation.

13. In Kalawati Sakharam Ingulkar v. Ma-hindra Ugine Steel Co. Ltd, 1988 (II) LLN 62, the injury sustained by the workman by accident arising out of and in the course of employment resulted in death after about six months it was held that the death need not be a direct result of the injury even if it has contributed to accelerate the death and it is enough for the case to fall within Section 3 of the Act.

14. In United India Insurance Co. Ltd. v. Ya-sodhara Amma reported in (1990-I-LLJ-387)(Ker), a bus conductor died by a heart attack after working hours when he was sleeping in the bus. It was held that there was causal connection between the death of workman and work done in the course of employment. The nature of his duty contributed to great strain both mentally and physically which resulted in cardiac arrest.

15. In Mrs. Tejubai and Ors. v. General Manager W. Rly. Bombay and Ors. reported in 1983 LAB I.C. 119, learned Single Judge, Gu-jarat High Court held that accident is an event happening to a man not only externally but also internally. The death was due to heart failure while on duty. It was held that the workman received injury and died because of accident arising out of and in course of employment.

16. A contrary though more logical view was taken by this Court in the case of Superintendent of Mines v. Smt. Lalo Devi reported in 1985 BLT (Rep) 267 (DB) Sandhawalia, C.J. sitting with S. Roy, J, after review of various decisions of the subject Interpretation of Section 32 of Workmen's Compensation Act, held that the liability for payment of compensation arises only when actual physical accident and consequential personal injury has resulted. The facts of that case was some what similar to the present case. But this decision of this Court was reversed by the Supreme Court in Smt. Lalo Devi v. Superintendent of Mines 1988 BLT 162. The Supreme Court allowed the appeal by passing the following orders:-

'After hearing the learned counsel for both the parties we are of the view that in this case the High Court should not have reversed the judgment of the Labour Court. The judgment of the High Court is therefore set aside and the Judgment of the Labour Court is restored. We are told that out of the compensation of Rs.30,000/- awarded by the Labour Court Rs.15,000/- has already been paid. The balance shall be paid within six weeks to the appellant. The appeal is accordingly allowed. The appellant is also entitled to costs which is quantified at Rs.1000/-'.

17. The whole submission of Mr. Banerjee counsel for the appellant is based on the decision of this Court referred to above.

18. In the result, I do not find any reason to disturb the finding of the Labour Court though in some places the Labour Court has indulged in surmises. There is, however, no error in the award. This appeal is accordingly dismissed, but without costs.

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