

Sumitra Devi Vs. Executive Engineer, Udar Asthan Irrigation Division

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Court : Patna

Decided On : Dec-21-1995

Judge : Nagendra Rai and A.N. Trivedi, JJ.

Acts : Workmen's Compensation Act, 1923 - Sections 2(1), 3, 30 and 30(1)

Appeal No. : M.A. No. 119/1980

Appellant : Sumitra Devi

Respondent : Executive Engineer, Udar Asthan Irrigation Division

Advocate for Def. : Government Pleader

Advocate for Pet/Ap. : Gur Bachan Singh, Adv.

Disposition : Appeal allowed

Judgement :

Nagendra Rai, J.

1. The present appeal has been filed under Section 30(1) of the Workmen's Compensation Act, 1923, (hereinafter referred to as 'the Act') against

the judgment dated March 18, 1980, passed by the Commissioner under the Workmen's Compensation Act at Patna, in Workmen's Compensation Case No. 12 of 1977/6 of 1978, by which the

application filed by the appellant for compensation under Section 3 of the Act has been dismissed.

2. The deceased Narendra Kumar was appointed as seasonal khalasi under the Irrigation Department by the Assistant Engineer, Udar Asthan in the district of Gaya on July 21, 1975 for a period up to October 20, 1975. On October 1, 1975 he was on duty at Dhawal Bigha Canal Regulator under Udar Asthan Irrigation Scheme. According to the appellant, her husband Narendra Kumar while on night duty on October 1, 1975 at Dhawal Bigha Canal Regulator was done to death. She filed a claim application under Section 3 of the Act claiming Rs. 16,800/- as compensation.

3. The respondent Executive Engineer contested the claim primarily on two grounds; firstly, that the deceased was not a workman as defined under the Act and, secondly, that the deceased did not die by an accident arising out of and in course of his employment.

4. Both the parties examined two witnesses each in support of their cases. Applicant examined herself as AW 1 and one Aditya Narayan Pandey as AW 2. The applicant stated that her husband was on duty and he was murdered at the Dhawal Bigha Regulator. In cross-examination she stated that her husband was murdered due to old enmity. AW 2 stated that the deceased Narendra Kumar was done to death while he was on duty.

5. The respondent has examined P.K. Krishna Panikar, Junior Engineer, posted in the Irrigation Department at the relevant time as OPW 1 and Binda Singh, Canal Meth. as OPW 2. OPW 1 has admitted that at the relevant time the deceased was on duty at canal on regulator and chowkidar informed him that he was traceless and then he reported that the deceased perhaps has died. OPW 2 has stated that he was sleeping along with the deceased at the place of duty and he woke up on hearing the sound of firing. Thereafter, he fled away.

6. The Commissioner under the Act held that the deceased was not a workman as defined under Section 2(1)(n) of the Act and even assuming that he was a workman, he did not die by an accident arising out of and in the course of his

employment and, as such, the applicant is not entitled to compensation under the Act.

7. The matter was placed for final hearing before the learned single Judge of this Court, who has referred the case to a Division Bench, as, according to him, two important questions arise for determination in this case which are as follows :

(1) Section 30 of the Workmen's Compensation Act, 1923, provides that no appeal shall lie against any order unless a substantial question of law is involved in the appeal. Is it open to the appellant to dispute the finding of fact duly arrived at by the Labour Court?

(2) Whether the murder of an employee at the instance of his enemies will bring the case in the course of employment, simply because he was murdered at the place of his duty?

8. The first question to be determined is as to the scope of the appeal under Section 30 of the Act. The relevant portion of Section 30 of the Act runs as follows :

'(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely-

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

(aa) an order awarding interest or penalty under Section 4A;

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependents of a

deceased workman, or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Sub-section (2) of Section 12; or,

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in Clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees:

XXX X X'

9. A bare reading of the aforesaid provisions shows that the appeal lies only on a substantial question of law. The legislature has not indicated therein as to what is the substantial question of law and, as such, it is neither desirable nor practicable to state as to what are the situations where a substantial question of law will be said to be involved in the appeal. However, this much is clear that if a question of fact has been determined by the Commissioner after taking into consideration the materials on the record and by applying well settled principles of law then this Court cannot interfere with the finding of fact only on the ground that two views are possible or on appreciation of evidence a different view than the view taken by the Commissioner can be taken.

10. The meaning and import of the words 'substantial question of law' has been the subject-matter of discussion and decision by the various High Courts and the Apex Court. So far as the question of general public importance and the questions where no final decision has been given by the High Courts or finally settled by the Supreme Court

are concerned, the same have been held to be the questions involving substantial questions of law. However, such questions will arise only in far and few cases and if the Section 30 is interpreted to include only those two situations, in that case, Section 30 will not serve its purpose especially when Section 30 provides for the first appeal against the judgment of the Commissioner. In my view, this Section

has to be given a liberal meaning. If a question of law arising between the parties is of arguable nature, then that will be a good ground of appeal under Section 30 of the Act. Apart from the aforesaid ground if the Commissioner while arriving at the finding of fact has overlooked the material evidence or has relied upon inadmissible evidence or has applied the law wrongly or his finding is based on no evidence or is based on only conjecture and surmises or has overlooked the statutory provision or misconstrued the same, then such question for the purpose of Section 30 will be said to be the substantial question of law. However, I would like to add that insufficiency of material in arriving at a finding or reappreciation of evidence on the ground that a different view is possible on the same set of facts cannot be said to be a substantial question of law. For the purpose of Section 30 of the Act, if the question of law is fairly arguable or where there is a room for difference of opinion with regard to the question involved, then the question will be treated as substantial question of law. Thus, in my considered view, it is open to the appellant to challenge the finding of facts duly arrived at by the lower Court on any of the grounds mentioned above.

11. So far as the second question formulated by the learned single Judge is concerned, in my view, that question will arise only when the finding of fact arrived at by the Commissioner that the deceased died at the place of duty on account of some old enmity and not by an accident arising out of and in course of his employment is found to be a finding of fact arrived at in accordance with law.

12. As stated above, the Commissioner has negated the claim of the appellant on two grounds. Now, it has to be seen as to whether the findings arrived at by the Commissioner on the aforesaid two points are findings of fact duly recorded according to law.

13. The 'workman' has been defined under Section 2(1)(n) of the Act, which runs as follows:

' 'Workman' means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is-

(i) a railway servant as defined in Section 3 of the Indian Railways Act, 1890, not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(ii) employed in any such capacity as is specified in Schedule II,

whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependants or any of them.'

14. Admittedly, the deceased was employed as casual khalasi by a competent authority of the Irrigation Department. It is also an admitted position that at the time when he is alleged to have been murdered he was on duty at Dhawal Bigha Canal Regulator to protect the canal and the said duty will be treated to be a trade and business in terms of the aforesaid definition read with Schedule II. It is provided therein that the person whose employment is of casual nature and is employed for the purposes of the employer's trade or

business will be treated as a workman for the purposes of the Act. Before a person will not be treated as a workman, two conditions are to be proved, i.e., his employment is of casual nature and he was not employed for the purpose of employer's trade or business. Both the requirements have to be read conjunctively and both the conditions have to be proved by the employer before employee is denied the benefit under the Act. As the Act has provided for payment of compensation by the employer to his workmen, the onus is on the employer to prove that the particular person claiming compensation is not a workman. In this case, as stated above, it is not disputed that the deceased was on duty and, as such, he was engaged in trade or business in terms of the aforesaid definition, as referred to above. In such a situation, one of the two conditions for denying the claim to the workman in terms of the definition has not been proved by the employer by any evidence on the record and as the employer has not proved that deceased was not a workman, accordingly, the Commissioner was in error in holding that the deceased was not a workman.

15. In the case of Madanlal v. Mangali, 1958-65 ACJ 41 (Rajasthan), it has been held that the word 'and' used in the definition of 'workman' has been used conjunctively and, therefore, in order to take out a labourer from the category of a workman, both the conditions have to be satisfied: (1) that the person's employment should be casual and (2) the employment should be otherwise than in the employer's trade or business. Absence of only one of the conditions will not result in taking out a labourer from the category of workman. I fully agree with the view taken in the aforesaid case and for the reason stated above, I hold that the Commissioner has committed an error of law of substantial nature in holding that the deceased was not a workman by overlooking the definition of the word 'workman'.

15-A. Even assuming that proving of one of those conditions would be sufficient to deny the

benefit to a workman, I am of the view that even the nature of employment of the deceased was considered by wrongly applying the law. The definition requires that the employment should be of a casual nature, it does not speak that the person should be casually employed. The said definition has been noticed by the Kerala High Court in the case of Kochu Vein v. Purakkattu Joseph, 1982 ACJ (Supp) 486 (Kerala), wherein it has been held that the employment of casual nature denotes a concept different from casually employed for, in one case, the question is as to the nature of the employment while in the other case, the question is how the person has been employed. As held by the Kerala High Court, it has to be determined as to whether the employment is of casual nature or not. In other words, whether the employment is of a protracted or transient nature or it is very brief and transitory. If the employment is of a longer duration then even if the person is appointed casually he cannot be denied the benefit of the provisions of the Act. Engagement of a workman on permanent basis, temporary basis or on payment of daily wages cannot be a safe criterion to determine as to the nature of the employment. Employment may be of a regular nature, though the incumbent may be engaged on casual basis. In the present case, the duty was to guard the regulator at the canal. The nature of employment cannot be said to be of a casual nature. In this case, the requirement to guard or protect the canal is always required every year

and that cannot be said to be transitory in nature. No doubt, the deceased was employed for a particular period of time, but, in view of the nature of his employment, as indicated above, the deceased cannot be said to be in an employment of casual nature. The Commissioner has failed to appreciate the definition of the word 'workman', as stated above, and, as such, his finding that the appointment of the deceased was of a casual nature is vitiated by an apparent error of law. In my considered view, the deceased was a workman, as defined under the Act.

16. The next point to be determined is as to whether the deceased received injury resulting in his death by an accident arising out of and in the course of his employment, because the liability of the employer to pay the compensation to the employee arises only if the injury or death has occurred by a happening or accident in the aforesaid circumstances. The relevant provisions of Section 3 of the Act are as follows :

'(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:

Provided that the employer shall not be so liable-

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;

(b) in respect of any injury, not resulting in death, caused by an accident which is directly attributable to-

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the

safety of workmen.'

17. In *Cardillo Frank A. v. Liberty Mutual Insurance Co.*, 330 US 469, the U.S. Supreme Court has opined that the words 'arising out of and in the course of employment' are deceptively simple and litigiously prolific.

18. It is not necessary to go into the catena of English cases with regard to the true meaning and

effect of the aforesaid words for the reason that the Apex Court had occasion to consider the meaning of the aforesaid words in the case of *Mackinnon Mackenzie & Co. Pvt. Ltd. v. Ibrahim Mahmmod Issak*, (1970-I-LLJ-16) and has held as follows at PP 18-19:

'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 causal 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.'

19. According to the Supreme Court, there must be a causal relationship between the accident and the employment. If in course of the employment an employee has to remain at a particular place and the nature of duties is such that he has to face peril and the accident is caused by reason of the said peril which he has to face

then

a causal relationship is established between the accident and the employment. In other words, if the nature of employment is such that it has to suffer hazard or risks and the said risks caused injury, or death, or was one of the ordinary risks of the employment, or reasonably incidental to the employment then the compensation has to be awarded. However, if in course of employment the employee dies for a reason different or unconnected with his employment, then he is not entitled to compensation.

20. In the present case, the finding arrived at by the Commissioner that he died on account of some old enmity and his death was not the result of an accident arising out of and in the course of his employment has been arrived at by him by overlooking the material evidence on the record and relying upon a hearsay evidence. It is an admitted case that the deceased was on duty at the canal. Even the witnesses of the respondents have admitted that the deceased was on duty at the relevant time and one of them heard the sound of firing. The blood was also found near the place of duty but the dead body of the deceased was not found there.

21. The wife of the deceased has been examined as AW 1. In examination-in-chief she has made statement to the same effect, however, in cross-examination she has stated that the deceased was done to death at the place of the duty by his enemy. Admittedly, she was not present at the place where the deceased was done to death and her aforesaid statement is only a conjecture and surmise and the Commissioner was wholly unjustified in coming to the conclusion that the deceased was done to death by his enemy, and, as such, the said finding is not binding on this Court and the evidence has to be considered to find out as to whether the deceased died by an accident arising out of and in course of his employment. In view of the admitted fact that while the deceased was on duty at the canal some persons

came and fired at him and thereafter he became traceless, it has to be held that he was done to death in course of his employment especially when the respondents have not brought any material to show that he died in a different way. On the basis

of the evidence on the record, it is held that the deceased received injury resulting in his death by accident arising out of and in course of his employment.

22. In the case of Superintending Engineer, Parambikulam Aliar Project, Pollachi v. Andammal, (1983-II-LLJ-326), a Lascar appointed to regulate the flow of water in a branch canal by operating upon the sluices and shutters, was done to death at the place of duty by the person against whom he had made the complaint. There was nothing on the record to show that he had added the peril. The Madras High Court in the aforesaid circumstance held that there was causal and proximate connection between the employment and the accident and the accident will be treated to have arisen out of and in the course of his employment and, as such, the applicant is entitled to compensation.

23. In the case of Mohanlal Prabhuram v. Fine Knitting Mills Co. Ltd., 1958-65 ACJ 27 (Bombay), a workman of the mill while on duty was assaulted by a workman with the help of the outsiders resulting in serious injury to him. It was held that there was a causal relationship between the accident and the employment. Similarly, in the case of Naima Bibi v. Lodhne Colliery Co.

Ltd., (1977-II-LLJ-69) a colliery worker while returning after performing his duty was assaulted by unknown persons in the colliery premises, as a result of which he died at the spot. The Calcutta High Court took the view that he had been at the spot because of his employment and, as such, the accident has arisen out of and in the course of his employment and the employer is liable to pay the compensation.

24. The law laid down in the aforesaid cases fully applies in the present case also, as from the evidence of the witnesses it is found that the deceased was at the spot because of his nature of employment to watch the regulator at canal and while he was on duty at the canal he was done to death by the miscreants. Thus, there was a causal and proximate connection between the accident and the employment. The applicant is entitled to compensation, as prayed for. The Commissioner has committed a serious error of law, as indicated above, in negating the claim of compensation of the appellant. As the finding of the Commissioner that employee was done to death due to enmity is held to be bad in law, the second question

referred to Division Bench does not survive for determination.

25. In the result, this appeal is allowed and the judgment of the Commissioner is set aside and the claim of the appellant is allowed. The appellant is also entitled to interest at the rate of 6 per cent from the date of filing of the application by her till the payment of amount.

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